

Appl. No. 10/542,506
Amdt. dated November 23, 2009
Reply to Office action of July 23, 2009

REMARKS/ARGUMENTS

Public use/sale

Applicant's assignee sold packets of aqueous thickener concentrate in accordance with the disclosure of its U.S. Patent application 10/485,879 more than one year before the effective filing date of the present application. Therefore, such packaged thickener concentrate is prior art with respect to the present application.

Election/Restriction

Applicant confirms his election. He notes, however, that the present application is a national phase application of a PCT application. He therefore is entitled to claim a machine as well as the method using the machine in the same application. Therefore, machine claims have been added, as well as additional method claims.

Rejections under 35 U.S.C. 112

It is noted that In re Mayhew stands for the proposition that a claim cannot omit features disclosed in the specification to be critical to the invention. This is not such a case. In any event, it is believed that the rejections under 35 U.S.C. 112 have been overcome by the present amendments to the claims.

Rejection under 35 U.S.C. 102(b)

Claims 39-45 were rejected under 35 U.S.C. 102(b) as anticipated by Wierlo, US Patent No. 3,839,407. Claim 39 as amended calls for, "A process for the production of homogenous single phase thickened beverages suitable for consumption by a person

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suffering from dysphagia, comprising connecting a source of aqueous liquid thickener to a dispensing machine that is capable of dispensing non-thickened beverages. Nothing in Wierlo suggests such a method. Wierlo is directed to a blender for making multi-flavored milkshakes, and has nothing to do with modifying a beverage dispensing machine in the manner recited. Further, those skilled in the art would immediately recognize that a milkshake (or other drink dependent on temperature to determine viscosity) melts in the consumer's mouth and would therefore not be suitable for consumption by a person suffering from dysphagia.

Newly added claims 57-89 are likewise directed to methods and machines which are believed to be properly joined with claims 39-45 and which are believed to be patentable over the art of record.

It is respectfully requested that the case be passed to issue. Should the Examiner have questions or suggestions, he is urged to call applicant's undersigned attorney.

Respectfully submitted,

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